

asserts, that, even *in flumine privato, pro reparando aquæductu vel clusa molen-
dini, licet imponere ligna vel lapides in fundo vicinorum, iis invitis.*

Yet the Lords found Linthill had proven his interruption, *tam viâ facti quam
juris*, of Sir Patrick's forty years' possession of that mill; and that Sir Patrick's
mill makes Linthill's restagnate; and therefore assoilyied Linthill from his
declarator, and found Sir Patrick could not impose a servitude of laying over
his dam-head on Linthill's side of the water.

But Sir Patrick now thinks that his mill will go, though he do not build his
dam-head close to the other side of the water, but mid-stream and more.

The words of the interlocutor were:—The Lords sustain Linthill's inter-
ruptions *via facti*, notwithstanding the agreement in 1625 produced, betwixt
the Laird of Ayton and the Laird of Wedderburn; both because it is not in-
structed that Ayton was Linthill's author in thir lands, and that the said con-
tract is only a personal deed, and Linthill is a singular successor; and there-
fore assoilyie Linthill from that point, whereby Sir Patrick craved power to
affix the land-staill of his dam-head on the other side of the river, whereof
Linthill has either right of property or commonty.

That reason of its being personal seems not good; for, in servitudes,
(*v. g.* a bond of thirlage, &c.) a personal right is sufficient to constitute them
without infestment, even against a singular successor, where the bond is
clad with possession. See Dury, 18th January 1622, *Turnbull* against *Blan-
erne*; and 12th March 1630, *Town of Edinburgh* against *Leith*, where an old
servitude of girnelling is declared. *Vol. I. Page 313.*

1687. *January 22.*—Sir Patrick Home, advocate, against Home of Lint-
hill, anent the mill at Eyemouth, mentioned 21st November 1684. The
Lords, having considered the report of the probation, found this mill occa-
sioned no restagnation to Linthill's mill; but, the land on the other side be-
ing Linthill's, they would not suffer Sir Patrick to lay his dam-head on that
land, but to keep it on the trough of the water, and so *in alveo* as that it
be not in the dead water, but in the middle of the current or stream.

Vol. I. Page 442.

1687. *January 28.* CHRISTIAN JUSTICE against BUCHANAN of LENY.

THE case of Christian Justice, relict of John Buchanan, against Buchanan
of Leny is reported by Kemnay. Leny, by a contract, was obliged to denude
himself of the right of two sums due to her husband by Clackmannan and
Seaforth, with warrandice from his own fact and deed; which two sums
were evicted by Buchanan of Arnprior, on a former right he had got from
the husband; but, by a posterior clause, Leny is obliged to warrant all her
provisions, whereof this was alleged to be one.

The Lords found this posterior warrandice did not extend to make him liable
for thir evicted sums, the warrandice being specific, only from his own fact and
deed. And this being reclaimed against, the Lords adhered.

Vol. I. Page 443.